

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5860 of 1986

Date of decision: 16-2-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G S R T C

Versus

HARILAL K JOSHI

Appearance:

MR SN SHELAT for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/02/98

ORAL JUDGEMENT

Heard the learned counsel for the parties.

In view of the fact that the respondent workman is reinstated back in service and he is working in the Corporation for all these years, learned counsel for the petitioner has restricted his submission to the part of the award under which 50% backwages were ordered to be given to the respondent workman. This Court on 25th July, 1990 passed the following order:

"It is stated that respondent is already reinstated in service but he is paid only the wages last drawn in view of the ad-interim relief granted by this court.

Since the respondent is already reinstated in service, the question of staying the award insofar as the direction of reinstatement of respondent in service is concerned does not survive. So far as back wages are concerned, having regard to the facts and circumstances of the case, we are of the opinion that the petitioner Corporation should be directed to deposit 30% of the back wages within four weeks from today with liberty to respondent to withdraw the same without furnishing security. Ad interim stay shall stand vacated to the extent stated above. "

2. It is an admitted position that 30% of back wages as ordered to be deposited by this court under the aforesaid order has been deposited by the petitioner Corporation and the respondent workman has withdrawn the said amount. The petitioner was found guilty of the misconduct, but the Labour Court in exercise of its powers under section 11A of the Industrial Disputes Act, 1947 found that the punishment of dismissal was disproportionate to the guilt, and therefore 50% of the back wages of the respondent workman was ordered to be withheld by way of punishment. But the Labour Court has not recorded any reasons how it has reached the figure of 50%. From the interim order of this Court dated 25th July, 1990 it appears that this Court has considered that 30% back wages may be reasonable amount and the learned counsel for the respondent workman has also not seriously opposed that in case the award is modified to the extent that by way of penalty 70% back wages may be ordered to be withheld.

3. In the result this special civil application is partly allowed. The award of the Labour Court is modified in terms that 70% of back wages payable to the respondent workman maybe withheld as penalty for the misconduct committed, and the amount of 30% back wages already paid to the workman in terms of the interim order passed by this court on 25-7-1990 is confirmed. Special civil application and rule stand disposed of accordingly. No order as to costs.

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